



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 17-03279  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

07/02/2018

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 12, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 7, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on February 26, 2018. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant submitted a timely response and his exhibits are marked as Applicant's Exhibits (AE) A through D. There were no objections by Applicant or Department Counsel and all Items and exhibits and are admitted into evidence. The case was assigned to me on May 10, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He is a high school graduate. He was employed from 2005 until 2009. He left that job to begin working for his present employer, a federal contractor. He did not disclose any periods of unemployment. He is not married, but cohabitated with a person beginning in January 2010. During his May 2017 interview with a government investigator, he stated he was no longer cohabitating with this person. He has a five-year-old child from a previous relationship. He pays child support.<sup>1</sup>

The SOR alleges 12 delinquent debts totaling approximately \$14,301. These debts are supported by Applicant's admissions and credit reports from September 2016 and September 2017.<sup>2</sup>

Applicant completed a security clearance application in August 2016. During his May 2017 background interview, he was confronted with all of the debts subsequently alleged in the SOR. He told the investigator that he was aware of the debt in SOR ¶ 1.d (\$675), which was a store credit card that was charged off. He did not have enough income to pay the debt. He planned to set up a payment plan by June 2017 and satisfy the account by December 2017. In his February 2018 response to the FORM, he said he contacted the creditor, and it did not have records of the account. The credit report shows the last activity on this account was in April 2011.<sup>3</sup>

Applicant also told the investigator that he was aware of the debt in SOR ¶ 1.g (\$590), which was a personal loan. He said he was making timely payments in person. He asked if he could send payments by money order and was told yes. The money order was returned, he was told it was late, and he needed to pay in person. The creditor would not accept the money order. He told the investigator that he paid the lump sum owed in 2016. Applicant's September 2017 credit report shows the debt is paid.<sup>4</sup>

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<sup>1</sup> Items 4, 5.

<sup>2</sup> Items 3, 4, 5, 6, 7.

<sup>3</sup> Items 4, 5, 6, 7.

<sup>4</sup> Items 5, 6, 7.

Applicant told the investigator that he disagreed with the remaining debts in the SOR. He did not know recognize any of the other accounts; did not know when they were opened; whether they were joint accounts; or the type of account. He said he had recently obtained a credit report. He would contact each of the creditors that the investigator confronted him with to verify each account. If an account was verified he would satisfy the account with a lump sum in December 2017 or arrange a payment plan also by December 2017.<sup>5</sup>

In Applicant's November 2017 answer to the SOR, he stated:

I would like to state that failure to meet my financial obligations were not based off of poor self-control, lack of judgment or unwillingness to abide by rules and regulations. Though I am not making excuses during the listed times, I did experience personal hardships. My take home income greatly decreased because of my child support order. I am now in a position to rectify all negative accounts. And plan to do so within the next six months.<sup>6</sup>

Applicant's child was born in June 2013. He did not explain the specifics of the child support order; when he started paying it; or the amount. He did not provide specific information about his income, expenses, or if he has a budget. Some of Applicant's debts became delinquent before his child was born.<sup>7</sup>

In Applicant's response to the FORM, he provided a copy of a money order from February 2018 for \$143 sent to the cell phone creditor in SOR ¶ 1.e (\$289). The last activity noted on Applicant's credit report was August 2013. He said the debt was settled, but did not provide evidence from the creditor that it settled the debt for a lesser amount.<sup>8</sup>

Applicant provided copies of money orders to the same utility creditor from February 2018 for the debts in SOR ¶¶ 1.f (\$211-last activity noted on credit report was August 2016) and 1.i (\$89-last activity noted on credit report was November 2015).<sup>9</sup> These debts are satisfied.

Applicant provided a copy of a money order from February 2018 for the insurance debt in SOR ¶ 1.k (\$186).<sup>10</sup> The debt is satisfied.

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<sup>5</sup> Item 5.

<sup>6</sup> Item 3.

<sup>7</sup> Items 6, 7.

<sup>8</sup> AE A, D.

<sup>9</sup> Items 6, 7; AE B.

<sup>10</sup> AE C

Applicant stated that he contacted the creditors for the debts in SOR ¶¶ 1.h (medical - \$260 - last activity on credit report was 2010), 1.i (cable - \$223 - last activity on credit report was 2011), and 1.j (cable - \$193 - last activity on credit report was 2013) and was told there were no records for the accounts. These accounts do not appear on Applicant's September 2017 credit report, but do appear on his September 2016 credit report. Applicant admitted owing the debts. There is no evidence they were removed from the credit report because they were paid.<sup>11</sup>

Applicant stated that the debts in SOR ¶¶ 1.a (\$5,429), 1.b (\$3,938) and 1.c (\$2,218) are owed to apartments he rented. He said he was setting up payment plans to resolve the balances.<sup>12</sup>

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

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<sup>11</sup> Items 6, 7; AE A.

<sup>12</sup> AE A.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous unresolved delinquent debts that began accumulating in 2010. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a history of not meeting his financial obligations. He was confronted with delinquent debts during his 2017 background interview. He did not recognize many of the delinquent debts listed on his credit report, but later admitted he owed all of them in his answer to the SOR. Applicant stated during his August 2017 background interview that he would pay many of the debts by lump sum or arrange payment plans by December 2017. Applicant paid some of the small debts in February 2018. He stated that he intends to make payment arrangements for the larger debts. He stated with regard to the other debts that the creditors could not find records to verify the accounts. Applicant is still resolving his delinquent debts. He did not provide evidence of his current income, expenses, or budget. There is insufficient evidence to conclude that his behavior is unlikely to recur. Applicant's failure to pay his financial obligations casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to having to pay child support and its impact on his income. He did not provide specific information about his child support obligation or his income. Complying with his legal and moral obligation to pay child support is not a circumstance beyond his control. Applicant told the government investigator, he would resolve many of his delinquent debts by December 2017, but did not. After receiving the SOR, Applicant resolved some delinquent debts, but he does not

have a plan to pay the three largest debts. He said some creditors could not verify his account. AG ¶ 20(b) does not apply.

There is no evidence Applicant received financial counseling. Although he recently paid some debts, there is insufficient evidence to conclude there are clear indications that his financial problems are being resolved or under control. He did not provide information about his current finances and expenses. He has not yet made arrangements to pay his three largest debts. AG ¶ 20(c) does not apply.

Applicant paid the debt in SOR ¶ 1.g. He recently paid the delinquent debts in SOR ¶¶ 1.e, 1.f, 1.j and 1.l. However, these debts had been delinquent for many years. He paid them after he received the SOR. Regarding other debts alleged, he stated the creditors did not have records to verify them. Applicant admitted he owed them. He did not provide evidence that he paid these debts. Due to the age of the debts, it is likely the accounts were removed from the creditors' books. I cannot find that paying debts after receipt of the SOR constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 37 years old. He has been steadily employed since 2005. He attributed his financial problems to paying his child support obligation. He did not provide specific information regarding his income, expenses, or his child support order. Some delinquent

debts predate the birth of his child. Applicant has made some efforts to pay some of his delinquent debts, but that did not occur until after he received the SOR. At this juncture, Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge